

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re

Fred Fuller Oil & Propane Co., Inc.
Debtor

Chapter 11
Case No. 14-12188-JMD

Hearing: 12/17/18 at 1:00 p.m.

**OBJECTION OF UNITED STATES TRUSTEE TO FIRST INTERIM AND FINAL FEE
APPLICATION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

To the Honorable Michael Fagone, U.S. Bankruptcy Judge

Pursuant to 11 U.S.C. §§ 330 and 1103, and 28 U.S.C. § 586, William K. Harrington, United States Trustee, submits this objection to the First Interim and Final Fee Application of fees and Expenses of Brinkman Portillo Ronk, APC, counsel to the Official Committee of Unsecured Creditors. In support of this Objection, the United States Trustee respectfully submits:

1. On November 10, 2014, the Debtor commenced this case under chapter 11. The case thereafter proceeded at a frantic pace, with the Court approving a sale of substantially all assets of the estate on November 26, 2014 over the objection of a number of parties, including the United States Trustee. *See* Court Docket No. 105.

2. On February 12, 2015, the United States Trustee appointed a three member Official Committee of Unsecured Creditors, consisting of Tarantin Industries, Inc. (Mr. William Craig), J.A. Marino Automatic Heating Supply Co., Inc. (Mr. Joseph Marino), and Sanel Auto Parts Co. (Mr. George LeCours). *See* Court Docket Nos. 163, 164.

3. On March 10, 2015, the Committee filed an application to retain Brinkman, Portillo Ronk, of Westlake Village, California as counsel to the Committee. *See* Court Docket No. 190. Attorney Leonard Deming, of Nashua, New Hampshire, was “of counsel” to the firm. The Court granted the Committee’s retention of counsel by Order dated March 17, 2015. *See* Court Docket No. 196.

4. On March 17, 2016, following a gridlock in management, the United States Trustee filed a motion for authority to appoint a chapter 11 trustee or in the alternative to convert to chapter 7. *See* Court Docket No. 481. Following a brief continuance, the motion was heard on May 10, 2016. After hearing the positions of the parties, the motion to authorize the appointment of a chapter 11 trustee was granted. *See* Court Docket No. 555. On May 13, 2016, the United States Trustee thereafter appointed Harry Murphy, Esq., of Murphy & King. *See* Court Docket Nos. 576, 577.

5. On November 16, 2018, Mr. Murphy filed a motion for authority to pay chapter 11 administrative claims. *See* Court Docket No. 1041.

6. On November 20, 2018, Brinkman, Portillo Ronk submitted a First and Final Fee Application seeking \$209,006.25 in fees and \$7,353.85 in expenses. *See* Court Docket No. 1046.

7. The United States Trustee understands that Mr. Murphy will likely file a motion to convert the case to chapter 7 in the near future.

8. On information and belief Mr. Murphy has sufficient funds on hand to satisfy chapter 11 administrative claims.¹

9. The United States Trustee objects to the Brinkman, Portillo Ronk Fee Application on a number of grounds. The Application does not indicate whether the Committee supports or opposes the Application. The Application indicates it was served on Mr. George LeCours of Sanel Auto Parts. The United States Trustee understands from Committee Member Sanel Auto Parts that its Credit Manager, Mr. George LeCours, left the company roughly 18 months ago. Its current Credit Manager, Ms. Debra Holmes, had no information about a Creditors' Committee and no

¹ Upon information and belief no chapter 11 administrative claims bar date has been issued.

understanding of Sanel Auto Parts' role vis-à-vis the Committee. Ms. Holmes expressed to the United States Trustee that she has no interest in serving any role with the Committee. The United States Trustee also contacted Mr. Marino of J.A. Marino and he was unaware that counsel to the Committee had filed a Fee Application, and had not had a communication from counsel in quite some time.² The United States Trustee has not yet reached Mr. William Craig of Tarantin Industries.

10. Under the circumstances, the United States Trustee requests that the Committee's Fee Application be deferred and that the United States Trustee be permitted to conduct limited discovery.

11. The United States Trustee would like to generally note these objections to the Application:

- a. The firm seeks reimbursements of \$25,386.75 for "asset analysis and recovery" but the firm does not indicate how any of these services resulted in any recovery for the estate.
- b. The firm incurred charges of \$47,384.50 for "case administration." "Case administration" is described as keeping the Committee appraised of relevant deadlines, reviewing pleadings and responding to the United States Trustee's motion to convert. Brinkman Portillo Ronk asserts that it successfully argued for the appointment of a chapter 11 trustee, but the docket reflects that the firm initially objected to the United States Trustee's Motion. *See* Court Docket No. 502. On May 9, 2016, the firm did an about face and supported the appointment of a chapter 11 trustee. *See* Court Docket

² The United States Trustee contacted Mr. Marino because it did not appear that he had been given notice of the hearing on his company's chapter 11 administrative expense claim on December 17, 2018.

No. 554.

- c. Brinkman, Portillo Ronk spent \$13,749 to “preserve the creditors’ rights and maximize recoveries” but the firm does not explain how these services provided any benefit to the estate or to the Committee.
- d. The firm incurred \$42,197.50 reviewing and analyzing claims and drafted certain claims objections and closely monitored claims objection proceedings. The firm’s motion to be given authority to file these claims objections or to file and prosecute avoidance actions was filed on April 28, 2016, but was withdrawn “as moot” on August 18, 2016. *See* Court Docket No. 530; 682. How these services translated to tangible benefits is not explained.
- e. The firm filed a six page Objection to Disclosure Statement and two page joinder in the United States Trustee’s Objection to the Debtor’s Disclosure Statement, incurring \$20,008 in fees under the general category of “Disclosure Statement/Plan of Reorganization.” *See* Court Docket No. 378; 384.
- f. After a chapter 11 trustee was appointed, the only action taken by the Committee as shown on the docket was its effort to support an election that would displace Mr. Murphy. *See* Court Docket Nos. 651, 652.
- g. In general, it is not clear from the Application what services the firm provided that were reasonable and necessary after the chapter 11 trustee was in place, and at whose direction the services were performed.

12. The United States Trustee reserves the right to raise additional objections to the Application after limited discovery.

13. Given the imminent conversion of the case, and the question as to whether the Committee has taken a position on the Fee Application, the United States Trustee asks that the Fee Application be deferred pending further hearing.

* * *

WHEREFORE the United States Trustee requests that the Court consider these comments and defer ruling on the Fee Application, and to take such appropriate action as it deems proper under the circumstances.

Respectfully submitted,

WILLIAM K. HARRINGTON
United States Trustee

By his attorney,

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Dated: December 10, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this date, I served a copy of the foregoing on the attached Service List by CM/ECF:

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Dated: December 10, 2018